***THE HONOURABLE SRI JUSTICE P.S.NARAYANA**

+Writ Petition No. 20175 OF 2006

% 02-01-2007

Smt. D.Sujatha.

...

Petitioner

VS.

$ 1. The Chief Executive Officer
and 2 others.

...Respondents

! Counsel for the petitioner: Sri A.Prabhakar Rao
^ Counsel for the respondent Nos.1 & 2: Sri R.Prem Sagar (SC)
Counsel for the respondent No.3 : Sri A.Sanjeeva Reddy.

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> Head Note :

? CITATIONS :
1. 2004(1) ALD 54 (DB)

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.20175 of 2006

Date: 02nd January 2007

Between:
Smt. D.Sujatha, w/o D.Babu Rao,
aged 38 years, Occ: President, Mandal Parishad,
Kodakandla, Warangal district.

... Petitioner.

And

1. The Chief Executive Officer,
   Zilla Parishad, Warangal,
   Warangal District and 2 others.

... Respondents.

* * *

ORDER:

This Court ordered notice before admission on 26.9.2006. Sri R.Prem Sagar had taken notice on behalf of R-1 and R-2 and the counsel for petitioner was permitted to take out notice to R-3 and file proof of service. R-3 is served and learned counsel Sri A.Sanjeeva Reddy represents R-3. In W.P.M.P.No.25498 of 2006 this court granted interim suspension for a period of three weeks, which is being extended for a limited period from time to time.

2. The writ petition is filed for a writ of Mandamus declaring the proceedings in Rc.No.B2/2282/2006, dated 16.9.2006, issued by the first respondent whereby intimating the petitioner that she incurred disqualification to continue as M.P.T.C. Member, Koripally and President, Mandal Parishad, Kodakandla, Warangal District, as illegal,

arbitrary and without jurisdiction; and consequently direct the respondents to continue the petitioner as M.P.T.C. Member, Koripally and President, Mandal Parishad, Kodakandla, Warangal District, till the alleged controversy relating to disqualification is decided by competent court under Section 22 of the A.P. Panchayat Raj Act, 1994, and pass such other suitable orders.

3. The impugned order dated 16.9.2006 in Rc.No.B2/2282/2006 styled as letter of intimation reads as hereunder.

LETTER OF INTIMATION

Sub:- Z.P. Warangal- Disqualification of Members allegation made against Smt. D.Sujatha, w/o D.Babu Rao, MPTC Koripally and President, Mandal Parishad, Kodakandla for disqualification letter of intimation- Issued- Reg.

Ref:- 1) Allegation of Sri V.Narsimha Reddy contested candidate of MPTC, Koripally, Mandal Kodakandla, dated 25.7.2006.

2) This office Procgs. No.B2/2282/2006, dated 01.8.2006.

3) Enquiry Officer and MRO Kodakandla Lr.No.B/4439/2006, dated 09.09.2006.

* * *

Sri V.Narsimha Reddy contested candidate of MPTC, Koripally Mandal Kodakandla has submitted a petition that Smt. D.Sujatha w/o D.Babu Rao elected MPTC, Koripally and President, Mandal Parishad, Kodakandla and allegedthat she is having (3) children and liable for disqualification under AP PR Act, 1994.

The Mandal Revenue Officer, Kodakandla has been appointed Enquiry Officer through the reference 2nd cited.

The Mandal Revenue Officer, Kodakandla duly enclosing the date of birth certificates issued by the Register Birth and Death, Quthubullapur Municipality of Ranga Reddy District and Kodali Nursing Home, IDPL Colony, Hyderabad, submitted an enquiry report through the reference 3rd cited. The certificates submitted by the Mandal Revenue Officer and the complainant are coinciding. As such
Smt. D.Sujatha, w/o D.Babu Rao is attracting disqualification for having more than (2) children under Sections 19(3) and 156(2) of AP PR Act, 1994.

In view of the above, Smt. D.Sujatha, MPTC, Koripally and President, Mandal Parishad, Kodakandla is attracting the provisions of disqualification for having more than (2) children in accordance with the provision under Section 19(3) of AP PR Act, 1994.

In accordance to the provisions laid under Section 156(2) of AP PR Act, 1994 intimation letter is herewith sent.

Chief Executive Officer,
Zilla Parishad, Warangal.

4. The petitioner had averred that she had contested the election to the Mandal Parishad Territorial constituency from Koripally of Kodandla Mandal, Warangal District and she was declared elected as M.P.T.C. Member and she was also elected as President, Mandal Parishad, Kodandla, Warangal District. The third respondent having lost in the election filed election petition O.P.No.44 of 2006 before the Election Tribunal-cum-Senior Civil Judge, Jangaon, Warangal District, against the petitioner raising the ground that the petitioner is having more than 3 children and thereby she incurs disqualification by virtue of Section 19(3) of the A.P. Panchayat Raj Act, 1994 (hereinafter in short referred to as
'the Act' for the purpose of convenience). The said election petition is

said to be pending for adjudication before the election tribunal. Further it had been averred that the third respondent having filed election petition praying for the relief to declare the election of the petitioner as M.P.T.C. Member of Koripally and President of Mandal Parishad, Kodakandla, as illegal, without waiting for the result in the said O.P.No.44 of 206 appears to have submitted a representation to the first respondent to initiate proceedings for the purpose of declaring the petitioner as disqualified to continue as M.P.T.C. Member and President of Mandal Parishad, Kodakandla, Warangal District. The first respondent, on receipt of the representation from the third respondent, appointed the Mandal Revenue Officer, Kodakandla, as enquiry officer to conduct enquiry as to the allegations made in the representation said to have submitted by the third respondent. The first respondent on receipt of report from the enquiry officer i.e., Mandal Revenue Officer, Kodakandla, issued impugned proceedings dated 16.9.2006 intimating the petitioner that the petitioner incurred disqualification to continue as M.P.T.C. Member, Koripally and President of Mandal Parishad, Kodakandla on the ground that the petitioner is having third child as enumerated under Section 19(3) of the Act. Specific stand is taken that the petitioner had not given birth to the third child after the period mentioned in Section 19(3) of the Act and she is having three children and the third child was born on 12th March 1995 and as such she is not to be declared as disqualified under Section 19(3) of the Act. It had been further averred that the issue relating to disqualification under Sections 17, 18, 19, 20 of the Act may have to be adjudicated by competent court i.e., District Court under Section 22 of the Act and the petitioner is entitled to continue as M.P.T.C. and president of the Mandal Parishad, Kodakandla, till the competent court decides the issue relating to the alleged

disqualification. Certain other facts also had been averred in the affidavit filed in support of the writ petition.

5. In the counter-affidavit filed by the respondent No.1, the Chief Executive Officer, Zilla Parishad, Warangal, Warangal District it had been averred that the writ petitioner contested as a candidate of M.P.T.C. Koripalli, Warangal District and elected as M.P.T.C. Member and also elected as President of Mandal Parishad, Kodakandla, Warangal District. The third respondent also contested as candidate of M.P.T.C. Koripalli Mandal and lost his election. The third respondent submitted a petition that the writ petitioner is having three children and liable for disqualification under the Act. The Mandal Revenue Officer, Kodakandla had been appointed as an enquiry officer vide proceedings No.B2/2282/2006, dated 01.8.2006, and the Mandal Revenue Officer submitted a report on 09.9.2006 duly enclosing the date of birth certificate issued by the Registrar of birth and death, Quthbullapur Municipality of Ranga Reddy District and Kodali Nursing Home, IDPL Colony, Hyderabad, and the certificates submitted by the Mandal Revenue Officer, and the documents submitted by the third respondent are coinciding and the date of birth of the petitioner's third child i.e., master B.Pranay is 12.3.1996 and the certificate submitted by the third respondent are also the same. Hence, the petitioner is attracting disqualification for having more than two children after 30.5.1995, which is the cut of date to be counted for the purpose of Sections 19(3) and 156(2) of the Act. It also had been averred that the respondent No.1 gave intimation letter on 16.9.2006 to the writ petitioner under Section 19(3) of the Act and hence there is no illegality in the impugned order.

6. It is true that the impugned order is styled as letter of intimation.

But, however it is specified that Smt. D.Sujatha, M.P.T.C., Koripally and President, Mandal Parishad, Kodakandla is attracting the provisions of disqualification for having more than two children in accordance with the provision under Section 19(3) of the Act.

7. Section 22 of the Act dealing with authority to decide questions of disqualification of members reads as hereunder.

> "22. **Authority to decide questions of disqualification of members**:- (1) Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified of has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the (District Court) having jurisdiction over the area in which office of the gram panchayat is situated for decision.
>
> (2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.
>
> (3) Where a person ceases to be the Sarpanch or Upa-Sarpanch of a gram panchayat as a consequence of his ceasing to be a number of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be."

Sub-section 2 of Section 22 of the Act specifies that pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

8. Section 156 of the Act deals with disqualifications and the said provision reads as hereunder.

> " 156. **Disqualifications:-** (1) A member of the Mandal Parishad shall be disqualified for election as President or Vice-President if he is in arrears of any dues, otherwise than in a fiduciary capacity to a gram panchayat, a Mandal parishad or the Zilla Parishad or if he is interest in a subsisting contract made with, or any work being done, for, any gram panchayat in the Mandal or the Mandal Parishad or the Zilla Parishad within whose jurisdiction the Mandal Parishad is situated or any other Mandal Parishad within the jurisdiction of that Zilla Parishad:
>
> Provided that a person shall not be deemed to have any interest in such contract or work by reason only of his having a share or interest in—
>
> (i) a company as a mere shareholder but not as a director;
> (ii) any lease, sale or purchase of immovable property or any agreement for the same; or
> (iii) any agreement for the loan of money or any security for the payment of money only; or
> (iv) any newspaper in which any advertisement relating to the affairs of any of aforesaid Mandal Parishad is inserted.
>
> (2) The provisions of Sections 18, 19, 20, 21 and 22 shall apply to a member of the Mandal Parishad as they apply to a member or the gram panchayat subject to the variations that for the expression "gram panchayat", "executive authority", "Sarpanch", "Upa-Sarpanch" and "District Panchayat Officer", the expressions "Mandal Parishad", "Mandal Parishad Development Officer", "President", "Vice-President" and "Chief (Executive Authority), shall respectively be substituted:

> Provided that nothing in clause (b) of Section 20 shall apply to a member of the Mandal Parishad specified in clause (ii), clause (iii) and clause (iv) of sub-section (1) of Section 149."

Sub-section 2 of Section 156 of the Act already referred to supra specifies that the provisions of Sections 18, 19, 20, 21 and 22 shall apply to a member of the Mandal Parishad as they apply to a member of the gram panchayat subject to the variations and the variations relating to the expressions had been specified and how to be substituted also had been explained. The proviso also specifies that nothing in clause (b) of Section 20 shall apply to the member of the Mandal Parishad specified in clause (ii), clause (iii) and clause (iv) of sub-section (1) of Section 149. Section 149 of the Act deals with composition of Mandal Parishad. While dealing with Sections 22 and 19 of the Act, the Division Bench of this Court in **Chava Rosaiah V. Chintala Venkateswarlu and another**[1] held as hereunder.

> "The disqualification on which the petitioner was held to have incurred disqualification alleging that there is surcharge amounts not cleared by the petitioner or there are amounts due and payable by him for the previous period of office. Whether a member or Sarpanch is in arrears of any dues or not is a question of fact. In case it is alleged that after a member or Sarpanch has been duly
> re-elected he is still in arrears and such member or Sarpanch would dispute such allegation, it cannot be said that having failed to apply to District Court for adjudication, the member or Sarpanch would automatically cease to continue as member or Sarpanch after expiry of period of two months from the date of receiving of intimation by him. Unless there is a decision on the allegations so made against the member or Sarpanch by an adjudicatory authority, which in this case is District Judge, such allegations cannot be used against the member or Sarpanch and he would continue to hold the office of

member or Sarpanch unless removed in accordance with law. The answer to the question posed obviously is in negative.

In the instant case, admittedly there had been no adjudication and the petitioner also did not seek any decision. Even the Gram Panchayat or the Commissioner did not direct the executive authority to seek decision from the District Judge on the allegations so made. In such an event, action impugned could not have been taken against the petitioner. The District Panchayat Officer thus exceeded his jurisdiction in issuing proceedings dated 7.8.2003 holding that petitioner had incurred disqualification under Section 19(2)(i) read with Section 14 of the Act or that he had ceased to hold the office of Sarpanch. The said order being void and without jurisdiction, the District Panchayat Officer had also no authority or jurisdiction to issue the consequential order dated 30.8.2003 calling upon the 2nd respondent to act as Sarpanch."

9. In the light of the statutory provisions referred to supra and also the decision of the Division Bench specified above, there cannot be any doubt or controversy that unless and until the election of the petitioner is set aside by a competent election tribunal or the disqualification is decided in accordance with the procedure as contemplated by the provisions referred to supra by the competent District Court, till then it cannot be said that the petitioner can be declared to have incurred such disqualification. In other words it is clarified that the competent election tribunal or the competent District Court may have to adjudicate upon this controversy and decide the same in accordance with law in relation to the question of disqualification. However, certain submissions are made that inasmuch as by virtue of interim suspension obtained by the writ petitioner before this court, the said period may have to be excluded

for the purpose of computing the period of limitation. It is needless to say that concern District Court may go into this question also and decide the matter in accordance with law.

10. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

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(P.S.NARAYANA, J.)

Date: January 2, 2007.
BSB

L.R. Copy to be marked

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[1] 2004 (1) ALD 54 (DB)